IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT APPEAL No : 597 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/02/2004 in W.P. No.12419 of 1992 on the file of the High Court.)

Between:

1. George Sebastian, S/o. Late T.J.Sebastian, (Ex.JC-103739.A Sub/Clk. (GD), R/o.24-20, Venkatapuram, Secunderabad-15.

2. B.Koteswara Rao, S/o.Venkaiah, Ex.JC-103742.A Sub/Clk. (GD), R/o.1-19-68/1, Venkatapuram, Alwal, Secunderabad-15.

..... APPELLANTS

AND

1. Government of India, represented by its Secretary, Ministry of Defence, New Delhi.

2. Officer-in-charge, EME (Electrical and Mechanical Engineers) Records, Secunderabad-21.

3. C.K.Singh, JC-97800.A Sub/Clk. (GD). C/o.EME-Records, Secunderabad-21.

4. M.C.Tiwari, JC-97801, H. Sub/Clk. (GD). C/o.EME-Records, Secunderabad-21.

5. C.Madhavan, JC-96951.N Sub/Clk. (GD). C/o.EME-Records, Secunderabad-21.

6. K.S.Yadava, JC-96952. Sub/Clk. (GD).

C/o.EME-Records, Secunderabad-21.

.....RESPONDENTS

Counsel for the Appellants: MR.V.JAGAPATHI

Counsel for the Respondent No1: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

Counsel for the Respondent No.2: MR. N.H. RANGA REDDY

Counsel for the Respondent Nos.3 to 6: MR. GANGA RAO

The Court made the following :

JUDGMENT: (per Hon'ble Smt. Justice T. Meena Kumari)

This writ appeal is filed by the appellants aggrieved by the order in W.P.No.12419 of 1992, dated 3.02.2004, under which the learned Single Judge dismissed the said writ petition.

The appellants herein are the writ petitioners. Originally, the writ petition was filed by them seeking a direction, in the nature of writ of Mandamus, declaring that the petitioners are seniors to the respondents 3 to 6 and are entitled to be promoted in all categories up to Subedar Major before respondents 3 to 6 and consequentially, to direct respondents 1 and 2 to promote the petitioners on the dates when the respondents 3 to 6 were promoted up to the category of Subedar Major and further to pay arrears of pay and pension.

The learned Single Judge of this Court having observed that at the earliest point of time, the seniority of the petitioners was superceded in the post of Naik and thereafter, respondents 3 to 6 were admittedly seniors to the petitioners and therefore, the petitioners are not entitled for the relief sought for, dismissed the petition.

Heard the learned Counsel on either side.

The learned Counsel for the appellants contended that the rules

governing for promotions to Havaldar, Naib Subedar, Subedar Major etc., provide that the promotion is based on the total length of service i.e, seniority and as such all the promotions from sepoy to Subedar are based only on the seniority and hence, the finding of the learned single Judge that the seniority of the petitioners was superceded in the Post of Naik is not justified and therefore, the order of the learned Single Judge is liable to be set aside.

On the other hand, the learned Counsel for the respondents contended that the petitioners were lagging behind, as per the seniority, for promotion to the ranks of Havaldars, Naib Subedars and Subedars as their seniority was superceded to the rank of Naik and therefore, the order of the Single Judge is justified and therefore, the appeal is liable to be dismissed.

As can be seen from the record, it is apparent that the writ petitioners were promoted as Naiks in the year 1965, Havaldar Clerks in 1967 and Subedars in the year 1980 and they were retired as Subedars in the year 1989 itself whereas respondents 3 to 6 were promoted as Subedar Majors in the year 1989. At this stage, they have made a statutory complaint on 8.5.1989, but the same has not yet been considered. Therefore, they have approached this Court disputing the seniority of respondents 3 to 6.

According to the respondents, the seniority of the petitioners was superceded due to lack of requisite qualifications for promotion to the rank of Naik at the relevant point of time and therefore, the seniority in respect of the petitioners cannot be compared with that of respondents 3 to 6.

On a perusal of the entire record, it is apparent that the petitioners have not chosen to question the promotions effected from time to time from the year 1967 onwards, during which they were shown as juniors to respondents 3 to 6. Moreover, the petitioners having slept over the matter for about a period of more than 25 years and after retirement from service filed this writ petition. No material is placed before this Court, except the statutory complaint in question, as to their efforts in bringing the matter to the notice of their superior authorities with regard to their degradation in seniority at the relevant point of time.

In this background of the matter, We feel that there are no bona fides on the

part of the petitioners to agitate for promotion after a long lapse of time that too, after their retirement, by invoking the jurisdiction of this Court under Article 227 of the Constitution of India in view of the fact that the seniority of the petitioners was superceded for promotion at the earliest point of time as rightly observed by the learned single Judge and hence, the order of the learned single Judge, does not require any interference by this Court. We see no merits in this writ appeal and the same is liable to be dismissed.

Accordingly, the writ appeal is dismissed confirming the order of the learned single Judge. However, in the circumstances of the case, there will be no order as to the costs.

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Justice T. Meena Kumari

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Justice L. Narasimha Reddy

Dated: 7th April, 2005

Nn/Gurc.

Copy to:

1. The Secretary, Ministry of Defence, Government of India,

   New Delhi.

2. The Officer-incharge, EME (Electrical and Mechaical Engineers) Records, Secunderabad-21.

3. Two C.Cs to the Assistant Solicitor General, High Court Buildings, High Court of Andhra Pradesh, Hyderabad. (O.U.T.)

4. Two C.D. Copies.